

## **ORDINANCE NO. 05-20-2024 01-**

**AN ORDINANCE ADDING TITLE 04 – “PURCHASING”, AND CHAPTER 04.02 “UINTAH COUNTY PROCUREMENT”, CHAPTER 4.03 “INVITATION FOR BIDS”, CHAPTER 4.04 “REQUEST FOR PROPOSALS”, CHAPTER 4.05 “SUPPLEMENTAL PROCUREMENT PROCEDURES”, AND CHAPTER 4.06 “CONTRACTS AND PURCHASE ORDERS” IN THE UTAH COUNTY CODE**

**WHEREAS**, in accordance with Utah Code Annotated§ 63G-6a-107.4, Uintah County ("County") may adopt any or all provisions of the Utah Procurement Code;

**WHEREAS**, the County has elected to pass its own Procurement Ordinance that is patterned off some provisions of the Utah Procurement Code yet tailored to the specific needs of the County;

**WHEREAS**, the transparency of said Uintah County Purchasing procedure is enhanced by formally adopting it into the Uintah County Code;

**NOW THEREFORE, the County Legislative Body of Uintah County ordains as follows:**

**SECTION I.** Adding Title 04 "Purchasing", Chapter 04.02 "Uintah County Procurement", Chapter 4.03 "Invitation For Bids", Chapter 4.04 "Request For Proposals", Chapter 4.05 "Supplemental Procurement Procedures", and Chapter 4.06 "Contracts And Purchase Orders" to the Uintah County Code is added as set forth in the following pages.

**SECTION II. EFFECTIVE DATE.** Changes to the Uintah County Code shall take effect immediately. A copy will be deposited in the Clerk-Auditor's Office and a publication will be made in a newspaper having general circulation in the County, as required by Utah Code Annotated.

The current duly enacted Uintah County Purchasing Policy is hereby repealed in its entirety and the following is enacted:

### Purchasing Levels Quick Reference

\*This reference applies to all purchases except for Equipment (line 740) that is \$1,000 and above. All equipment purchases \$1,000 and above requires Commission Signatures.

#### Level One - Below \$2,500

- Solicitation: At the acquiring departments discretion to get the best value.
- Purchase Order: Not required.
- Authorization: Acquiring Department only.

#### Level Two - \$2,500 and up and below \$10,000

- Solicitation: Purchases below \$5,000 only require one quote. \$5,000 - below \$10,000 require two quotes when practical and possible. A minimum of one quote from the vendor is required to be submitted with all purchase requisitions. If only one quote is submitted for a purchase between \$5,000 - below \$10,000, an explanation must accompany the Purchase Requisition explaining why you were only able to acquire one quote.
- Purchase Order: Required
- Authorization: Acquiring Department, and Purchasing Agent

#### Level Three - \$10,000 and up and below \$30,000

- Solicitation: Acquire two quotes when practical and possible. A minimum of one quote is required to be submitted with the Purchase Requisition. If only one quote is submitted, an explanation must accompany the Purchase Requisition explaining why you were only able to acquire one quote.
- Purchase Order: Required
- Authorization: Acquiring Department, Purchasing Agent, Commission (unless approved in a commission meeting).

#### Level Four - \$30,000 and up

- Solicitation: Requires a publicly noticed solicitation, unless the purchase can be done through a State or National purchase contract, or any other qualifying reason.
- Purchase Order: Required
- Authorization: Department, Purchasing Agent, Commission (unless approved in a commission meeting).

**4.02 Chapter 4.02 – General Procurement Provisions**

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- 4.04.030 Proposal opening and acceptance
- 4.04.040 Clarifying information in a proposal
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- 4.05.010 Request for information
- 4.05.020 Request for Qualifications
- 4.05.030 Best and Final Offers
- 4.05.040 Extension of a contract without engaging in a procurement process
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**4.06 Chapter 4.06 – Contracts and Purchase Orders**

4.06.010 Approval of purchase orders

4.06.020 Approval of contracts

4.06.030 Approval of standard form contracts

4.06.040 Retention of records

4.06.050 Contract Amendments

#### **4 Title 4 - Purchasing**

##### **4.02 Chapter 4.02– General Procurement Provisions.**

###### **4.02.010 Title.**

- A. This title is known as "Purchasing."

###### **4.02.020 Purpose.**

- A. The purposes of this title are:

1. to enable the county to acquire those goods and services that are necessary for it to provide public services;
2. to ensure the fair and equitable treatment of all persons who participate in the procurement process;
3. to provide increased economy in county procurement activities; and
4. to foster effective broad-based competition within the free enterprise system.

- B. The provisions of this title should be liberally construed to accomplish those objectives.

###### **4.02.030 Application of title.**

- A. This title applies to every procurement made by the county unless otherwise stated.

- B. Where a signature is required, an electronic signature is acceptable.

- C. This title does not apply to:

1. the acquisition or rental of real property or an interest in real property;
2. the procurement of public utility services;
3. contracts between the county and other government entities.
4. supplies purchased for resale to the public;
5. activities related to the management of banking services and investments;
6. the hiring of a mediator, arbitrator, or arbitration panel member to participate in dispute resolution efforts;
7. the disposal of real or personal property;
8. the hiring of consultants or expert witnesses to aid in the prosecution or defense of criminal or civil legal matters.

- D. Notwithstanding any conflicting provision of this title, a procurement may be administered in accordance with the requirements imposed by a grant or other source of the funds used to procure the goods and services.

- E. Notwithstanding any conflicting provision of this title, if a procurement involves the expenditure of federal or state assistance, federal contract funds, local matching funds, or federal financial participation funds, the county shall comply with mandatory applicable federal or state law and regulations not reflected in this title.

- F. No department, office, advisory board, policy board, or other organization of county government, nor any officer or employee thereof, shall be authorized to execute any purchase order or contract except as specifically authorized in this title. All purchase orders and contracts executed in violation of this provision shall be void as to the county, and persons at fault may be held personally liable for such violations.

4.02.040 Definitions.

As used in this title:

- A. "Acquiring Department" means a department of the county or other entity authorized to engage in a procurement using public funds on behalf of the county.
- B. "Bid" means an offer by a bidder in response to an invitation for bids for the purchase of a tangible item, this does not include contracting for a service, construction project, or where the desired acquisition is of unknown quantity or quality.
- C. "Bidder" means a person who submits a response to a solicitation.
- D. "Commission" means a simple majority of the membership of the County Commissioners.
- E. "County" means the County of Uintah, Utah.
- F. "Days" means calendar days, unless expressly provided otherwise.
- G. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- H. "Fixed Asset" means items of furniture, equipment, machinery, vehicles, etc., which cost \$1,000 or more. Initial set-up or up-fit costs permanently attached to the fixed asset would be considered part of the cost to acquire the fixed asset.
- I. "Goods and services" means any work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature.
- J. "Grant" means an award of funds or other assistance under a set of prescribed criteria to accomplish a public purpose.
- K. "Immaterial error"
  - 1. means an irregularity or abnormality that is:
    - a. a matter of form that does not affect substance; or
    - b. an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other bidders; and
  - 2. includes:
    - a. a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;
    - b. a typographical error;
    - c. an error resulting from an inaccuracy or omission in the solicitation; and
    - d. any other error that the procurement official reasonably considers to be immaterial.
- L. "Invitation for bids" means the procurement process established under Chapter 4.03 of this title.
- M. "Level one" means purchases below \$2,500.
- N. "Level two" means purchases that are \$2,500 and up and below \$10,000.
- O. "Level three" means purchases that are \$10,000 and up and below \$30,000.

- P. "Level four" means purchases that are \$30,000 and up.
- Q. "Local Vendor" means a vendor that its principal place of business is located within Uintah County.
- R. "Non-Capitalized Equipment" means items of furniture, equipment, machinery, vehicles, etc., which cost less than \$1,000 and are not added to the fixed asset list as part of original set up costs of a larger purchase.
- S. "Procure" means to acquire goods and services through procurement.
- T. "Procurement" means the acquisition of goods and services through an expenditure of public funds, or an agreement to expend public funds, including an acquisition through a public-private partnership.
- U. "Proposal" means an offer by a bidder in response to a request for proposals for a capital improvement project or other construction related project. This may also include the intent to obtain intellectual property rights or tangible items of unknown quantity, quality, or application that is beyond the acquisition of a tangible item in a Bid.
- V. "Public funds" means money, regardless of its source, including from the federal government that is owned or held by the county.
- W. "Purchase Order" means a document issued by the Purchasing Agent to procure a quantified number of tangible items acquired by outright purchase. Purchase Order does not include the acquisition of intellectual property, services, or professional services.
- X. "Purchase Requisition" means a form issued by the Purchasing Agent used by the authorized purchaser as the first step in initiating purchases \$2,500 and up.
- Y. "Purchasing Agent" means the procurement officer for the county.
- Z. "Quote" means an offer by a bidder in response to a solicitation of quotes.
- AA. "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.
- BB. "Request for proposals" means the procurement process established under Chapter 4.04 of this title.
- CC. "Responsible" means being capable, in all respects, of:
  - 1. satisfactorily fulfilling all the requirements of the solicitation; and
  - 2. fully performing all the requirements of the contract resulting from the solicitation
  - 3. In determining responsibility, the Purchasing Agent may take into consideration:
    - a. the bidder's financial responsibility;
    - b. past transactions with the bidder;
    - c. the experience of the bidder or the bidder's employees, agents, or subcontractors;
    - d. the adequacy of the bidder's equipment;
    - e. the bidder's ability to complete performance within a specified time limit; and
    - f. other pertinent considerations.

Subject to Title 63G, Chapter 2, Government Records Access and Management Act, information regarding the responsibility of a bidder may not be disclosed without the bidder's prior written consent.

DD. "Responsive" means conforming in all material respects to the requirements of a solicitation. Responses that are not responsive include those that:

1. are conditional;
2. attempt to modify the solicitation requirements;
3. contain additional terms or conditions; or
4. otherwise fail to conform with the requirements or specifications of the solicitation.

EE. "Sole Source Vendor" means there is only one vendor capable of providing an item or service, and therefore it is not possible to obtain competitive bids.

FF. "Solicitation" means a solicitation of quotes, an invitation for bids, a request for proposals, or a request for statement of qualifications.

GG. "Solicitation of quotes" means the procurement process established under Section 4.02.070(D).

HH. "State Contract" means a contract that has been approved by the State of Utah through a standard procurement process, and the contract is available for use by other government entities.

II. "Subcontractor"

1. means a person under contract to perform part of a contractual obligation under the control of the contractor, whether the person's contract is with the contractor directly or with another person who is under contract to perform part of a contractual obligation under the control of the contractor; and
2. includes a supplier, distributor, or other vendor that furnishes supplies or services to a contractor

#### 4.02.050 Purchasing Agent.

A. The Purchasing Agent serves as the procurement officer of the county under the direction and supervision of the Uintah County Commission.

B. The Purchasing Agent shall:

1. develop procurement policies and procedures supporting ethical procurement practices, fair and open competition among bidders, and transparency within the procurement process;
2. ensure the county's compliance with any applicable law, rule, or policy applicable to procurement;
3. manage and supervise each procurement to ensure to the extent practicable that taxpayers receive the best value;
4. in consultation with the Uintah County Attorney's Office, correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with this title;
5. keep an accurate and complete record of all procurements and a detailed disposition of the same;
6. oversee the training of county employees regarding the procurement process;
7. provide exemplary customer service;



8. seek to continually improve the county's procurement operations;
  9. ensure that all aspects of each procurement are fully resolved including price, delivery date, delivery terms, acceptance period, warranties, and other terms and conditions as appropriate;
  10. exercise all other authority, fulfill all other duties and responsibilities, and perform all other functions authorized under this title.
- C. The Purchasing Agent may:
1. delegate limited purchasing authority to county employees, with appropriate oversight and control to ensure compliance with this title and with state law;
  2. delegate duties and authority to an employee of the purchasing department, as the Purchasing Agent considers appropriate in compliance with state law;
  3. negotiate and settle contract overcharges, undercharges, and claims, with final approval by the board of County Commissioners;
  4. waive any minor informality or minor technicality in a response which does not materially change the significant elements of the response and accept those responses deemed to be in the best interest of the county.
  5. cancel any solicitation when deemed in the best interest of the county;
  6. report to supervisor when being made aware of an individual that is part of the procurement process for:
    - a. having a conflict of interest or the appearance of a conflict of interest with a bidder;
    - b. having a bias or the appearance of bias for or against a bidder;
    - c. making an inconsistent or unexplainable score for a response;
    - d. having inappropriate contact or communication with a bidder;
    - e. socializing inappropriately with a bidder;
    - f. engaging in any other action or having any other association that causes the Purchasing Agent to conclude that the individual cannot fairly evaluate a response; or
    - g. any other violation of a law, rule, or policy.

4.02.060 Procurement process required.

- A. Except as otherwise provided, goods and services may not be procured by the county unless the county complies with the requirements of this title and uses:
1. a procurement process as defined under Section 4.02.070; or
  2. an exception to the procurement process, as defined under Sections 4.05.050 and 4.05.060.
- B. All purchase orders and contracts shall be made on a competitive basis to the maximum extent practicable.

4.02.070 Type of procurement process is based on total cost.

- A. Unless otherwise specified in this title, the cost of the goods and services determines the type of procurement process that should be followed.
- B. The acquiring department shall determine the total cost of a procurement by adding together all amounts to be paid over the entire term of the contract, including shipping charges, maintenance which is part of the contract, and any other costs or expenses anticipated to be borne by the county in connection with the procurement.
- C. Procurements that are less than \$2,500 are considered a level one purchase and may be made without engaging in a solicitation. These purchases require the approval of the acquiring department.
- D. Procurements that are \$2,500 and up and below \$10,000 are considered level two purchases and shall abide by the following:
  - 1. For purchases \$2,500 and up and below \$5,000, the acquiring depart is only required to provide one quote.
  - 2. For purchases \$5,000 and above, the acquiring department shall engage in the procurement through a solicitation of quotes by email, telephone, or otherwise to at least two bidders, or if the acquiring department is unable to identify at least two bidders, to as many bidders as can be reasonably identified.
  - 3. The Purchasing Agent shall evaluate each bid in the best interest of the county and may use the same evaluation criteria described in Section 4.03.070.
  - 4. Notwithstanding Subsection (D)(1) and (D)(2), the Purchasing Agent may, in the best interest of the county, require the procurement to be made following an invitation for bids or request for proposals.
  - 5. These purchases require the approval of the acquiring department, and the Purchasing Agent.
  - 6. The Purchasing Agent, upon receiving and approving a purchase requisition, shall issue the acquiring department a purchase order.
- E. Procurements that are \$10,000 and up and below \$30,000 are considered level three purchases and shall abide by the following:
  - 1. The acquiring department shall make the purchase following a solicitation of quotes to a least two bidders, invitation for bids, or request for proposals.
  - 2. The Purchasing Agent shall determine, in the best interest of the county, which type of procurement under Subsection (E)(1) shall be used.
  - 3. These purchases require the approval of the acquiring department, Purchasing Agent, and the commission.
  - 4. Upon being presented a completed purchase requisition, and upon Commission approval, the Purchasing Agent shall issue the acquiring department a purchase order.
- F. Procurements that are \$30,000 or more are considered level four purchases and shall abide by the following:

1. The acquiring department shall make the procurements following an invitation for bids or a request for proposals.
  2. The Purchasing Agent shall determine, in the best interest of the county, which type of procurement under Subsection (F)(1) shall be used.
  3. Upon Commission approval, the Purchasing Agent shall issue the acquiring department a purchase order.
- G. For all procurements exceeding \$30,000, a contract or purchase order shall be prepared formalizing such acquisition. The Purchasing Agent in consultation with the County Attorney and acquiring department head/elected Official shall determine, in the best interest of the county, whether a purchase order or contract shall be used. These purchases require the approval of the acquiring department, the Purchasing Agent, and the commission.

4.02.080 Purchasing card procedures

- A. County employees issued a county credit card will be required to sign a Uintah County Credit Use Agreement to be filed with the Clerk-Auditor.
- B. Purchasing Cards may be used for all appropriate County purchases. If the desired purchase is over the level one limit, then the process established in section 4.02.070 shall be followed
- C. After use of the card, receipts for purchases such as invoices, meal receipts, motel charges and other relevant documentation must be signed, coded and returned into the Clerk-Auditor in a timely manner. In the event documentation is lost, a lost receipt form must be signed and coded by the user with a short-written statement of the charges incurred and an explanation of the charges. If requested by the Clerk-Auditor, the user shall provide any additional information and documentation that is available in order to verify that the purchase was made for a proper county purpose.
- D. Only county purchases should be made with the county credit card. No personal items shall be purchased with the card.
- E. Failure to document purchases or otherwise violate this policy may result in the loss of use of the card. The Clerk-Auditor may give written notice of a user's failure to follow the policy. After two such notices the matter will be submitted to the County Commissioners to determine if the card should be revoked.
- F. Other sanctions, if appropriate, may be imposed for violation of this policy including prosecution for theft or misuse of public funds.

4.02.090 Security and performance bonds.

- A. The Purchasing Agent may require response security bonds, performance bonds, or other security as the Purchasing Agent deems advisable to protect the interests of the county.
- B. The requirements for security must be set forth in the solicitation.

#### **4.03 Chapter 4.03 – Initiation for Bids.**

##### **4.03.010 Policy of use.**

- A. An invitation for bids should be used when cost is the major factor in determining the award of procurement.

##### **4.03.020 Publication and contents of the invitation for bids.**

- A. The invitation for bids process begins when the Purchasing Agent publishes an invitation for bids. The Purchasing Agent shall publish an invitation for bids to the maximum extent practicable to promote fair competition. The Purchasing Agent may list the invitation for bids on available media which may include social media, websites, or other publication. The Purchasing Agent shall ensure that it is published in a weekly newspaper of general circulation for two consecutive publications before the day of the deadline for submission of a bid.
- B. An invitation for bids shall:
  - 1. be prepared by the acquiring department in consultation with the Purchasing Agent;
  - 2. to the extent practicable, provide a full description of the goods and services sought and a full scope of work;
  - 3. provide information on how to contact the Purchasing Agent regarding the solicitation;
  - 4. state the objective criteria that will be used to evaluate the bid;
  - 5. state the period of time during which bids will be accepted;
  - 6. provide instructions for submitting a bid.

##### **4.03.030 Bid opening and acceptance.**

- A. Bids shall be received by the Uintah County Clerk-Auditor.
- B. The Clerk-Auditor shall open the bids in a regularly scheduled County Commission work session meeting after the expiration of the time for submission of bids as indicated in the invitation for bids.
- C. The Clerk-Auditor shall deliver the opened bids to the Purchasing Agent for review.
- D. Bids shall be accepted without alteration or correction, except as otherwise authorized by this title.
- E. The Purchasing Agent may not consider a bid that was received after the time for submission.

##### **4.03.040 Clarifying information in a bid.**

- A. The Purchasing Agent may make a written request to a bidder to clarify information contained in a bid at any time.

##### **4.03.050 Rejecting a bid.**

- A. The Purchasing Agent may, in consultation with the County Attorney's Office, reject a bid for the following reasons:
  - 1. a violation of this title by the bidder who submitted the bid;

2. a violation of a requirement of the invitation for bids;
  3. unlawful or unethical conduct by the bidder who submitted the bid;
  4. the bid is not responsive or the bid is submitted by a bidder who is not responsible;
  5. a change in a bidder's circumstance that, had the change been known at the time the bid was submitted, would have caused the bid to be rejected; or
  6. the bidder has had a previous contract with the county that was canceled.
- B. If the Purchasing Agent rejects a bid, the Purchasing Agent shall make a written finding stating the reasons for the rejection.

4.03.060 Changes to bids after submission.

- A. The Purchasing Agent may allow a bidder to correct an immaterial error in a bid.
- B. The Purchasing Agent may not allow a bidder to make a change to a bid that is prejudicial to the competition. Changes that may be considered prejudicial to the competition include allowing a bidder to:
1. correct a deficiency, inaccuracy, or mistake that is not an immaterial error;
  2. submit documents that the solicitation required to be submitted with the bid;
  3. submit a bid that is late;
  4. remedy a cause for a bidder being considered to be not responsible or a bid not responsive ; or
  5. correct a defect or inadequacy resulting in a determination that a bidder's bid does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.
- C. Bidders may not change the total bid price after the deadline stated in the request for bids has past.
- D. In the event all bids exceed available funds and time or economic constraints preclude solicitation of a reduced scope of work, the Purchasing Agent may negotiate changes in the scope of work with the low bidder in order to bring the bid amount within the amount of available funds.

4.03.070 Evaluation of bids.

- A. The Purchasing Agent in consultation with the department head/elected official shall evaluate each bid using the objective criteria described in the invitation for bids, which may include:
1. cost;
  2. inspection;
  3. testing;
  4. quality;
  5. time and manner of delivery;
  6. whether the bidder has its principal place of business in Uintah County;
- B. Criteria not described in the invitation for bids may not be used to evaluate a bid.
- C. Preference may be given to Local vendor(s) that are within 5% of non-local vendors.

- D. Should the same situation occur in 4.03.070(C), except involve vendors that are located outside the state of Utah, the same procedure may be followed to give preference to the vendor located inside Utah with a 5% allowance.

4.03.080 Tie bids.

- A. As used in this section, "tie bid" means the lowest responsive responses of responsible bidders that are identical in price.
- B. The Purchasing Agent shall resolve a tie bid by:
  - 1. awarding the tie to the bidder who:
    - a. is located within Uintah County; or
    - b. is closest to the point of delivery; or
    - c. received the previous award; or
    - d. will provide the earliest delivery date;
  - 2. requesting best and final offers under Section 4.05.030; or
  - 3. by any other reasonable method of resolving a tie.
- C. The method chosen to resolve a tie shall be at the sole discretion of the Purchasing Agent.

4.03.090 Award or cancellation of a bid.

- A. The Purchasing Agent shall:
  - 1. recommend that the board of County Commissioners award a purchase order or contract as soon as practicable to the responsible bidder who submits the lowest responsive bid that meets the objective criteria described in the invitation for bids; or
  - 2. cancel the invitation for bids, in whole or in part, without awarding a purchase order or contract.
- B. If the Purchasing Agent cancels an invitation for bids without awarding a purchase order or contract, the Purchasing Agent shall provide written justification for the cancellation to all bidders.

**4.04 Chapter 4.04 – Request for Proposals.**

4.04.010 Policy of use.

- A. A request for proposals should be used when cost is not the major factor in determining the award of a procurement.

4.04.020 Publication and contents of the request for proposals.

- A. The request for proposals process begins when the Purchasing Agent publishes a request for proposals. The Purchasing Agent may publish the request for proposal on available media which may include social media, websites, or other publications. The Purchasing Agent shall publish a request for proposals to the maximum extent practicable to promote fair competition. The Purchasing Agent shall ensure that it is published in a weekly newspaper of general circulation for two consecutive publications before the day of the deadline for submission of a proposal.
- B. A request for proposals shall:

1. be prepared by the acquiring department in conjunction with the Purchasing Agent;
2. to the extent practicable, provide a full description of the goods and services sought and a full scope of work;
3. provide information on how to contact the Purchasing Agent regarding the solicitation;
4. state the objective and subjective criteria that will be used to evaluate the proposals;
5. provide information as to how cost and other evaluation factors will be scored by the evaluation committee;
6. state the period of time during which proposals will be accepted;
7. provide instructions for submitting a proposal.

4.04.030 Proposal opening and acceptance.

- A. Proposals shall be received by the Uintah County Clerk-Auditor.
- B. The Clerk-Auditor shall open the proposals in a regularly scheduled County Commission meeting after the expiration of the time for submission of proposals as indicated in the invitation for proposals.
- C. The Clerk-Auditor shall not disclose any bid pricing at the time of opening but shall read into the record the name of origin of the proposals.
- D. The Clerk-Auditor shall deliver the opened proposals to the Purchasing Agent for review.
- E. Proposals shall be accepted without alteration or correction, except as otherwise authorized by this title.
- F. The Purchasing Agent may not consider a proposal after the time for submission of proposals has expired.
- G. The Purchasing Agent shall remove any cost information from the proposals and then submit them to an evaluation committee.

4.04.040 Clarifying information in a proposal.

- A. The Purchasing Agent may make a written request to a bidder to clarify information contained in a proposal at any time.

4.04.050 Rejecting a proposal.

- A. The Purchasing Agent, in consultation with the County Attorney's Office, may reject a proposal for the following reasons:
  1. a violation of this title by the bidder who submitted the proposal;
  2. a violation of a requirement of the request for proposals;
  3. unlawful or unethical conduct by the bidder who submitted the proposal;
  4. the proposal is not responsive or the proposal is submitted by a bidder who is not responsible;
  5. a change in a bidder's circumstance that, had the change been known at the time the proposal was submitted, would have caused the proposal to be rejected or;
  6. the bidder has had a previous contract with the county that was canceled

- B. If the Purchasing Agent rejects a proposal, the Purchasing Agent shall make a written finding stating the reasons for the rejection.

4.04.060 Changes to proposals after submission.

- A. The Purchasing Agent may allow a bidder to correct an immaterial error in a proposal.
- B. The Purchasing Agent may not allow a bidder to make a change to a proposal that is prejudicial to the competition. Changes that may be considered prejudicial to the competition include allowing a bidder to:
  - 1. correct a deficiency, inaccuracy, or mistake that is not an immaterial error;
  - 2. submit documents that the solicitation required to be submitted with the proposal;
  - 3. submit a proposal that is late;
  - 4. remedy a cause for a bidder being considered to be not responsible or a proposal not responsive; or
  - 5. correct a defect or inadequacy resulting in a determination that a bidder's proposal does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.
- C. Bidders may not change the total proposal price after the proposal deadline has passed; however, the Purchasing Agent may negotiate the total price and the specific terms of the contract after the decision to award has been made.
- D. In the event all proposals exceed available funds and time or economic constraints preclude solicitation of a reduced scope of work, the Purchasing Agent may negotiate changes in the scope of work with the bidder that was selected by the evaluation committee in order to bring the proposal amount within the amount of available funds.

4.04.070 Evaluation of proposals.

- A. The Purchasing Agent shall appoint an evaluation committee of at least three members to evaluate proposals received in response to a request for proposals.
- B. Evaluation committee members should have at least a general familiarity with or basic understanding of:
  - 1. the technical requirements relating to the type of goods and services that is the subject of the procurement; and
  - 2. the need that the goods and services are intended to address.
- C. Evaluation committee members should:
  - 1. not have a conflict of interest with any of the bidders;
  - 2. be able to fairly evaluate each proposal;
  - 3. not contact or communicate with a bidder concerning the procurement outside the official evaluation committee process; and
  - 4. participate in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- D. The evaluation committee shall evaluate proposals in accordance with any process described in the request for proposals.



- E. The evaluation committee shall reject a proposal if it is not responsive or if the proposal was submitted by a bidder who is not responsible.
- F. The evaluation committee shall evaluate each proposal that has not been disqualified from consideration using the evaluation criteria described in the request for proposals.
- G. Criteria not described in the request for proposals may not be used to evaluate a proposal.
- H. Evaluation committee members are prohibited from knowing or having access to information relating to the cost of a proposal until after the evaluation committee submits its recommendation to the Purchasing Agent based on the scores of all criteria other than cost. The Purchasing Agent may waive this prohibition by signing a written statement indicating why waiving the prohibition is in the best interests of the county.
- I. An evaluation committee may not change its final recommended scores after the evaluation committee has submitted those scores to the Purchasing Agent.
- J. The deliberations and other proceedings of an evaluation committee may be held in private.
- K. At the conclusion of the evaluation committee's evaluation process, the evaluation committee shall prepare and submit to the Purchasing Agent a written statement that:
  - 1. contains the scores for each proposal based on the criteria stated in the request for proposals;
  - 2. recommends a proposal for an award of a purchase order or contract, if the evaluation committee decides to recommend a proposal; and
  - 3. explains how the recommended proposal provides the best value to the county.
- L. The Purchasing Agent shall factor in the cost of the proposals in accordance with the cost evaluation criteria established in the request for proposals.
- M. Preference may be given to Local vendor(s) that are within 5% of non-local vendors.
- N. Should the same situation occur in 4.04.070(K), except involve vendors that are located outside the state of Utah, the same procedure may be followed to give preference to the vendor located inside Utah with a 5% allowance.

**4.04.080 Tie Proposals.**

- A. The Purchasing Agent shall resolve a tie between proposals by:
  - 1. awarding the tie to the bidder who:
    - a. Is a local vendor; or
    - b. Has the lowest cost; or
    - c. received the previous award; or
    - d. will provide the earliest delivery date;
  - 2. requesting best and final offers under Section 4.05.030; or
  - 3. any other reasonable method of resolving a tie.
- B. The method chosen to resolve a tie shall be at the sole discretion of the Purchasing Agent.

**4.04.090 Award or cancellation of proposal.**

- A. The Purchasing Agent shall:

1. recommend that the board of County Commissioners award the purchase order or contract as soon as practicable to the bidder selected by the evaluation committee; or,
  2. cancel the request for proposals, in whole or in part, without awarding a purchase order or contract.
- B. If the Purchasing Agent cancels a request for proposals without awarding a purchase order or contract, the Purchasing Agent shall provide written justification for the cancellation to all bidders.

#### **4.05 Chapter 4.05 – Supplemental Procurement Procedures.**

##### **4.05.010 Request for information.**

- A. As used in this section, "request for information" means a non-binding process through which a procurement unit requests information, comments, or suggestions relating to goods and services.
- B. The Purchasing Agent may issue a request for information before issuing a solicitation.
- C. A request for information is not a procurement process and may not be used to:
  1. negotiate fees;
  2. make a procurement; or
  3. enter into a contract.
- D. A response to a request for information is not an offer and may not be accepted to form a binding contract.
- E. The Purchasing Agent, after receiving pricing information in response to a request for information, shall ensure that an individual who serves on an evaluation committee to evaluate proposals that include a proposal as to which the pricing information applies does not have access to the pricing information, except as provided in Subsection 4.04.070(H).
- F. A record containing information submitted to or by a governmental entity in response to a request for information may be a protected record under Utah Code § 63G -2-305(6).

##### **4.05.020 Request for Qualifications.**

- A. As used in this section, "request for qualifications" means a process used to solicit information about the qualifications of a person interested in responding to a potential procurement.
- B. The Purchasing Agent may issue a request for qualifications before issuing a solicitation in order to establish a list of qualified bidders from which further responses may be sought.
- C. The request for qualifications shall state that:
  1. the procurement process will consist of multiple stages;
  2. the request for qualifications stage is the first stage and is for prequalification only;
  3. a bidder may not submit any pricing information in the first stage; and
  4. a bidder may only participate in subsequent stages if the bidder prequalifies in the previous stage.

- D. The request for qualifications process shall follow the applicable procedures, as determined by the Purchasing Agent, in the request for proposals process under chapter 4.04 of this title except that the bidders that are selected will be advanced to the next stage instead of being awarded a purchase order or contract.
- E. A bidder is not qualified to advance to the next stage unless the bidder:
  - 1. is responsible; and
  - 2. submitted a response that meets the minimum mandatory requirements, evaluation criteria, and any applicable score thresholds set forth in the request for qualifications.
- F. By itself, the request for qualifications process may not be used to
  - 1. award a contract,
  - 2. solicit costs, pricing, or rates, or
  - 3. negotiate fees.

4.05.030 Best and Final Offers.

- A. The best and final offer process established in this section may be used in any procurement process.
- B. Subject to Subsection (C), the acquiring department may request best and final offers from responsible bidders:
  - 1. only with the approval of the Purchasing Agent; and
  - 2. if:
    - a. no single response adequately addresses all the specifications stated in the solicitation;
    - b. all responses are unclear or deficient in one or more respects;
    - c. all proposed costs exceed the acquiring department's available funding; or
    - d. two or more responses receive an identical evaluation score that is the highest score.
- C. A best and final offer may only be submitted by a responsible bidder that has submitted a responsive response.
- D. The best and final offer process may not be used to change:
  - 1. a determination that a bidder is not responsible to a determination that the bidder is responsible; or
  - 2. a determination that a response is not responsive to a determination that the response is responsive.
- E. This Subsection (E) applies if a request for best and final offers is issued because all proposed costs exceed the acquiring department's available funding.
  - 1. The acquiring department may, in the request for best and final offers:
    - a. specify the scope of work reductions the acquiring department is making in order to generate responses that are within the available funding; or
    - b. invite bidders submitting best and final offers to specify the scope of work reductions being made so that the reduced proposed cost is within the available funding.

2. The acquiring department is not required to accept a scope of work reduction that a bidder has specified in the bidder's best and final offer.
  3. A reduction in the scope of work may not:
    - a. eliminate a component identified in the solicitation as a minimum mandatory requirement; or
    - b. alter the nature of the original solicitation to the extent that such solicitation would have likely attracted a significantly different set of bidders submitting bids in response to the solicitation.
  - F. If a request for best and final offers is issued because two or more responses received an identical evaluation score that is the highest score:
    1. the request may be issued only to bidders who submitted a response receiving the highest score; and
    2. a bidder submitting a best and final offer may only revise the bidder's proposed cost.
  - G. In a request for best and final offers, the acquiring department shall:
    1. clearly specify:
      - a. the issue(s) that the acquiring department requests the bidders to address in their best and final offers; and
      - b. how the best and final offers will be evaluated; and
    2. establish a deadline for a bidder to submit a best and final offer.
  - H. In a best and final offer, a bidder:
    1. may address only the issues described in the request for best and final offers; and
    2. may not correct a material error or deficiency in the bidder's response unless the conditions of Subsections (B)(2)(a) or (B)(2)(b) are met.
  - I. After the deadline for submitting best and final offers has passed the Purchasing Agent or, if applicable, the evaluation committee shall evaluate the best and final offers submitted using the criteria described in the request for best and final offers and the solicitation.
  - J. The Purchasing Agent or, if applicable, the evaluation committee may not consider a best and final offer that the acquiring department has not requested under this section.
- 4.05.040 Extension of a contract without engaging in a procurement process.
- A. The county may extend an existing contract without engaging in a procurement process for a period of time not to exceed 120 days if the extension is necessary to avoid a lapse in a government service
- 4.05.050 Emergency Procurement.
- A. The county may obtain goods and services without engaging in a procurement process if:
    1. For Departments the Purchasing Agent determines, or for Elected Offices the Elected Official determines that the procurement is necessary to:
      - a. avoid a lapse in a critical government service;

- b. mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property, including an emergency or major disaster declared by the governor or the President of the United States;
    - c. protect the legal interests of the county; or
    - d. meet an immediate and serious need for supplies, services, or construction that cannot be met through a procurement process.
  - B. An emergency procurement shall be limited to those supplies, services, or construction items necessary to meet the emergency.
  - C. The Purchasing Agent shall ensure that procurements made under this chapter are made with as much competition as practicable and that federal laws and regulations are followed to ensure the availability of federal funds.
  - D. After the emergency has abated, the Purchasing Agent shall prepare a written document explaining the emergency condition that necessitated the emergency procurement and include the document in the procurement file.
- 4.05.060 Procurement of goods or services without engaging in a solicitation.
  - A. As used in this section, "transitional costs"
    - 1. means the cost of changing:
      - a. from an existing provider of a good or service to another provider of that good or service; or
      - b. from an existing type of good or service to another type; and
    - 2. includes:
      - a. training costs;
      - b. conversion costs;
      - c. compatibility costs;
      - d. costs associated with system downtime;
      - e. disruption of service costs;
      - f. staff time necessary to implement the change;
      - g. installation costs; and
      - h. ancillary software, hardware, equipment, or construction costs; and
    - 3. does not include:
      - a. the costs of preparing for or engaging in a procurement process; or
      - b. contract negotiation or drafting costs.
  - B. The county may obtain goods or services without engaging in a solicitation if the Purchasing Agent determines that:
    - 1. there is only one source for the goods and services;
    - 2. the goods and services are available to the county through a state or GSA contract;
    - 3. the goods and services are currently being provided to any federal, state, or local unit of government where such goods and services were acquired through the government entity's established procurement process, and engaging in a procurement process

- required under this title would yield the same or substantially similar result as determined by the Purchasing Agent;
4. the goods and services have been selected by a procurement organization that specializes in procurements for governmental entities, and the selection process used by the procurement organization satisfies the purposes of this title;
  5. based on the advice of appropriate technical experts or county agencies, the goods and services are of a nature that procurement without solicitation is necessary to ensure standardization of equipment or services, and that such standardization is necessary to maintaining system integrity, current warranties, ongoing maintenance, or continuity of service;
  6. transitional costs are a significant consideration in selecting the goods and services and the results of a cost-benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive, and the award of a contract without engaging in a solicitation is in the best interest of the county.
  7. the goods and services are made available by a contractor, architect, or engineer where:
    - a. the contractor, architect, or engineer was originally selected through a procurement process to work on a construction project for the county;
    - b. the construction project was completed within the past five years;
    - c. additional work needs to be done that is reasonably related to the work that was performed under the original contract; and
    - d. in the opinion of the Purchasing Agent, hiring the contractor, architect, or engineer that recently worked on the project will result in a cost savings to the county or an improvement in work product as a result of the technical expertise that was acquired by the contractor, architect, or engineer in their original work on the project; or
  8. the goods and services are not adapted to award through a solicitation, such as for the following items:
    - a. the services of an individual who possesses a high degree of professional skill where the ability or fitness of the individual plays an important part;
    - b. publication of legal notices, ordinances, resolutions, and other legal advertising;
    - c. the private placement of bonds, tax anticipation notes, or other instruments of indebtedness;
    - d. utility services such as water, electricity, gas, telephone, internet, except when alternative supplies or services are available;
    - e. subscriptions, media, magazines, books, journals, reference works, periodicals, testing materials, and similar articles of an educational or informational nature; or

- f. other goods and services that are not adapted to award through a solicitation as determined by the Purchasing Agent on a case-by-case basis.

#### **4.06 Chapter 4.06 – Contracts and Purchase Orders**

##### **4.06.010 Approval of purchase orders.**

- A. The Purchasing Agent shall prepare a purchase order form that shall be used whenever goods or services are acquired using a purchase order.
- B. The County Attorney's office shall review the purchase order form annually and approve it as to form and legality.
- C. A purchase requisition initiates the creation of a purchase order and should be submitted to the Purchasing Agent from the acquiring department.
- D. Where a signature is required, an electronic signature is acceptable.
- E. Purchase orders for less than \$10,000 shall be approved and signed by the Purchasing Agent.
- F. Purchase orders \$10,000 or more shall be approved by the board of County Commissioners and then signed by the Purchasing Agent.

##### **4.06.020 Approval of contracts.**

- A. The acquiring department, and Purchasing Agent, in consultation with the County Attorney's office, shall prepare contracts and obtain any required signatures.
- B. Except as otherwise provided in this title, the acquiring department shall submit each contract to the County Attorney's office for review.
- C. The County Attorney's office shall review each contract submitted by the acquiring department and attempt to resolve any legal concerns regarding the contract language. If the concerns cannot be resolved, the County Attorney's office shall make a note of the concerns on the contract approval sheet. Following legal review, the County Attorney's office shall forward the contract to the Purchasing Agent.
- D. The Purchasing Agent shall confirm that the procurement processes was followed.
- E. The Purchasing Agent shall verify that the acquiring department has sufficient funds in its budget and then submit the contract to the appropriate board for approval.
- F. All contracts shall be sent to the board of County Commissioners for approval

##### **4.06.030 Approval of standard form contracts.**

- A. Standard form contracts are exempt from the requirement of being approved by the board of County Commissioners in County Commission meetings. Such contracts may be approved and signed by the acquiring department head or elected official.
- B. Standard form contracts shall initially be reviewed and approved by the County Attorney's office as to form and legality.
- C. Any alteration of the standard form language without approval of the County Attorney shall render the contract void and without effect. If the County Attorney determines that

the proposed changes are material, then they will need to be approved by the Commission in a Commission Meeting. This condition shall be stated in an appropriate part of the contract.

- D. The title of standard form contracts shall include the designation "Standard Contract Form" and the date the standard form was approved by the attorney.
- E. The County Attorney shall maintain a file of all standard form contracts and review them annually for approval as provided herein. This requirement does not include executed standard form contracts.
- F. Standard form contracts that have been approved by the County Attorney do not need to be approved by the attorney for individual procurements.
- G. Once all parties have signed a standard form contract, the acquiring department shall forward the executed contract to the Clerk-Auditor for retention under Sec. 4.06.040

4.06.040 Retention of records.

- A. A copy of each fully executed contract shall be maintained by the Clerk-Auditor, who shall act as the repository for all county contracts.
- B. The Purchasing Agent will retain on file the original requisition, solicitation, evidence of publication, all responses, a copy of any purchase order which is prepared and approved, and any other documents or correspondence relating to the acquisition.
- C. All records referred to under this section shall be retained as long as prescribed in the retention schedule adopted by the county pursuant to state law.

4.06.050 Contract Amendments.

- A. Contracts may only be amended pursuant to the provisions of the original agreement.
- B. Any amendment to a contract, including change orders, must be authorized and processed according to the requirements of this title.
- C. Amendments must be in writing and must expressly specify all terms and conditions amended and which terms and conditions remain unchanged.



ENACTED this 21<sup>st</sup> day of May, 2024.

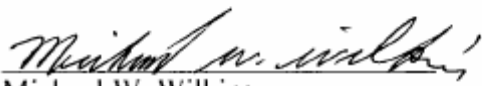
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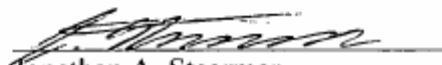
  
John Laursen, Chair

Sonja Norton	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Nay	<input type="checkbox"/> Abstain	<input type="checkbox"/> Absent
Brad G. Horrocks	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Nay	<input type="checkbox"/> Abstain	<input type="checkbox"/> Absent
John Laursen	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Nay	<input type="checkbox"/> Abstain	<input type="checkbox"/> Absent

ATTEST:

REVIEWED:

  
Michael W. Wilkins  
Clerk-Auditor

  
Jonathan A. Stearmer  
Chief Deputy Uintah County  
Attorney

